

Town of Claverack  
Zoning Board of Appeals  
P.O. Box V  
Mellenville, NY 12544  
MINUTES: April 25, 2018

Chairman David Graziano called the April 25, 2018 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Members in attendance: Chairman Graziano, John Porto, Chris Post, Roger Case, engineer; George Schmitt, attorney; Rob Fitzsimmons and secretary; Jodi Keyser.

Absent: Steven Melnyk

Chairman Graziano led members of the audience and Board of in the Pledge of Allegiance.

#### Correspondence

Review the minutes of the March 28, 2018 meeting.

Motion to approve the minutes of the March 28, 2018 meeting with minor corrections was made by John Porto with a second from Chris Post. All members were in favor. Motion carried.

#### **CONTINUING APPLICATIONS:**

**June/DeCrosta Area Variance:** Tax Map #(SBL)121 . 03 – 03 – 40 Located at 105 Apple Lane Claverack. Area Variance for side yard setback of 6 feet where 30 feet setback is required for the construction of a 24-foot X 32-foot storage shed.

Mr. DeCrosta, Mr. June and surveyor; Matt Bowe were present for the application. Mr. Bowe explained to the Board that his clients were seeking a rear yard setback of 6 feet from the required 30 foot setback to construct a 24 foot by 32 foot storage building. Chairman Graziano informed the Board that at the March meeting the Board was informed that the property is under a deed convenient and restriction which limits additional structures on the property to garage only. Chairman Graziano informed Mr. June and Mr. DeCrosta that if they were to move the structure 30 feet from the rear property line they would not need approval from the Town of Claverack Zoning Board of Appeals. Chairman Graziano continued that the property appears to have enough room to move this building to meet the setbacks. Mr. DeCrosta stated that he did not want to move the building because he has very expensive ornamental trees that he does not want to cut down so that is not an option. Matt Bowe submitted revised maps with highway marker, spruce trees along the side yard of the Plass property and a small shed on the neighboring property. Chairman Graziano asked if the Board members had any questions. Chris Post asked where the driveway would be located for accessing the garage. Matt Bowe stated that the building would be used for storage and not a garage so it would not need a driveway. Mr. Bowe continued that the building will be built the same as a garage with an overhead door facing NYS Rte. 9-H. Mr. DeCrosta stated that the leach field and ornamental trees the building would not have access. Mr. DeCrosta stated that this is not a garage and will not house vehicles just a simple outbuilding for storage. Chairman Graziano informed Mr. DeCrosta and Mr. June that their deed restricts other buildings on the property to a garage only and if the TOC ZBA were to grant the Area Variance they would be going against the deed restrictions. Rob Fitzsimmons informed the Board that the TOC does not enforce convenience or deed restrictions these are up to the private landowners to file a lawsuit if the deed restrictions are not followed. Rob Fitzsimmons informed Mr. DeCrosta and Mr. June that their deed restricts the accessory buildings to a 2 car garage only and that their neighbors can file a lawsuit if the building is anything other than a two car garage. John Porto stated that he is concerned with the deed and that the building will not follow the restrictions. Mr. DeCrosta stated that there are several out buildings in the neighborhood and the TOC allows them. Chairman Graziano informed Mr. DeCrosta that the TOC ZBA is only concerned with his Area Variance only. Mr. DeCrosta stated that this building is not a want

but a necessity. Mr. DeCrosta continued that he began the process for this building about 3 to 4 years ago and has spent a lot of time and money. Mr. DeCrosta continued that he is forced to park his car on the front lawn because he cannot use his garage. Mr. DeCrosta stated that he felt that the TOC ZBA is applying 2018 subdivision laws on a 1959 subdivision and it is not fair. Mr. DeCrosta stated that he is asking for the Area Variance for a need not a want. Mr. DeCrosta stated that to follow the setbacks would place the building in the middle of his property which would affect the property value of his property and the property values of his neighbors. Mr. DeCrosta stated that having a building in the middle of his lawn will also look awful both for him and his neighbors to look at. Mr. DeCrosta stated that the building should be located in the most remote location as possible.

Chairman Graziano opened the meeting to the public hearing at 7:42 p.m.

Matthew ? attorney for Susanna Rogers addressed the Board stating that his client is asking that the TOC ZBA hold Mr. DeCrosta and Mr. June to the deed restrictions. Mr. ? continued that the protection and impact on the neighborhood and to maintain the nature of the neighborhood is written within the convenience and restrictions of the deeds and if Mr. DeCrosta and Mr. June build the structure in question they neighbors are prepared to file a lawsuit. Mr. ? continued that the project is substantial, self-created and is not demonstrated the need to place the building where they want it because there is enough property to abide by the setbacks. Mr. ? continued that the TOC ZBA is obligated to grant the minimum variance possible. Mr. ? also stated that the convenience and restrictions of the deed is to protect the subdivisions neighbors from buildings like this. Mr. ? stated that Mr. DeCrosta and Mr. June have sufficient property to place the building within the setbacks. Mr. ? continued that this building is nothing more than a 768 square foot storage building and not a garage because there is limited access and no vehicle access for a garage.

Lisa Bowe stated that she does not live directly in the neighborhood but is only around the corner and feels that this building does not go with the neighborhood. Mrs. Bowe continued that she has a concern with the access for the building and understands that Mr. DeCrosta will have to use his neighbor's property (Griffin) during construction.

Jeff Plass stated that he had a concern for access during construction but understands that Mr. DeCrosta has an agreement with the Griffin's for using their property during construction. Mr. DeCrosta stated that he has approached the Griffins and has their blessing to use their property to access the construction site and for the project all together.

Chairman Graziano closed the public comment at 7:59 p.m.

Chairman Graziano asked Mr. DeCrosta if he had a written agreement with the Griffins. Mr. DeCrosta stated no but he has spoken to them about 12 to 14 months ago. Mr. DeCrosta continued that he approached each of his neighbors including Lee Hood about 3 to 4 years ago with this plan and no one had a problem actually gave their blessing. Chairman Graziano asked Mr. DeCrosta and Mr. June if they would be willing to go forward with the plan knowing that they may be sued. Mr. DeCrosta stated that he could not believe that Susanna Rogers would sue him. Mr. DeCrosta continued that Ms. Rogers hasn't owned her parent's property that long and how could she actually be opposed to the building. Mr. ? answered that his client Ms. Rogers has owned her parent's home since 2005. Rob Fitzsimmons informed Mr. DeCrosta and Mr. June that he wants them to know that even if the TOC ZBA approves this Area Variance or the building is moved to adhere to the setbacks there is a good possibility that the neighbors will file a lawsuit for violation of the deed restrictions. Mr. DeCrosta asked why the Town of Claverack hasn't gone after the other properties in the neighborhood that have outbuildings. Chairman Graziano informed the applicant that the TOC ZBA is focused on this application and the Area Variance that is requested. Mr. DeCrosta stated that he felt that this was selectivity. Chairman Graziano stated that the TOC ZBA is only reviewing the facts and information for his application and asked if Mr. DeCrosta and Mr. June want to proceed with the application. Mr. DeCrosta answered yes, why not, why would Ms. Rogers have a problem with the building. Rob Fitzsimmons informed the applicants that it is a legal issue with the deed restrictions. Mr. DeCrosta then asked if he has the same right to sue the neighbors that have storage sheds. Chairman Graziano reviewed the 5 criteria for determining an Area Variance approval as follows: #1 is yes because it is too close to the property line, #2 yes because the applicant has sufficient property to place the building within the setbacks, #3 yes because the variance being requested is 80% which is substantial, #4 is no because it is not adverse to the surrounding area and #5 is a yes because it is a self-created hardship. Mr. DeCrosta asked how the Town of Claverack could apply 2018 zoning laws to a 1959 subdivision. Chairman Graziano and Rob Fitzsimmons answered that is what the TOC and ZBA are bound.

Chairman Graziano asked the ZBA members for their vote:

Chris Post stated that 4 out of the 5 criteria were against the applicant so he cannot vote in favor.

John Porto stated that this is a definite self-created issue and his vote is to deny the application.

Roger Case answered no

Chairman Graziano voted no and that he feels the applicant's pain and understands but it is too difficult to support.

Motion to deny the application for an area variance of 24 feet for rear setbacks was made by John Porto with a second from Chris Post. All members were in favor. Motion carried. Area Variance denied.

Matt Bowe informed Mr. DeCrosta that his option was to try to purchase a 24 foot piece of property from the Griffins. Mr. DeCrosta stated that he is upset that Sue Hood Rogers would be against his plan. Mr. DeCrosta stated that he was upset that people can object to something when they don't even live in the neighborhood. Rob Fitzsimmons stated that he

understood Mr. DeCrosta's frustrations but the Town of Claverack Zoning Board of Appeals followed the appeal procedure for an area variance and they voted to deny the appeal.

Motion to adjourn the meeting was made by John Porto with a second from Roger Case. All members were in favor. Motion carried. Meeting adjourned at 8:20 p.m.

Respectfully submitted,  
Jodi Keyser, Secretary